



July 30, 2001

Illinois Center Plaza Venture
An Illinois Limited Partnership
c/o Sean W. Bezark, Esquire
Alzheimer & Gray
10 South Wacker Drive
Chicago, Illinois 60606-7482

EPA Region 5 Records Ctr.



225837

0000015

RE: Confirming Agreement for Environmental Gamma Radiation Survey of 26 Acre site,
Lakeshore East, Chicago, Illinois - STS Project No. 1-32193-XH

Dear Mr. Bezark:

As we have discussed, Alzheimer & Gray on behalf of it's client Illinois Center Plaza Venture (ICPV), an Illinois Limited Partnership, retained STS Consultants, Ltd. (STS) to perform a gamma radiation survey at the Family Golf Center property located at 221 North Columbus Drive in Chicago, Illinois (the Site). The scope of work for the gamma radiation survey is based on the information provided by Alzheimer & Gray and our experience on similar projects in the Chicago area. Based upon your verbal authorization to proceed, we have initiated the tasks described in this confirming agreement (herein referred to as "the agreement").

BACKGROUND

The U. S. Environmental Protection Agency (USEPA) conducted a walkover survey of a portion of the Site to measure gamma radiation. We understand the survey by USEPA covered approximately one-third of the Site and was conducted over a three-day period. The survey identified three anomalous areas indicative of material containing radionuclides above the cleanup level established for the area by USEPA. We understand that no samples were taken during the USEPA's survey, however it has requested that a surface gamma survey be conducted over the remainder of the Site. In addition, the USEPA has requested that subsurface soil samples be collected near the identified anomalies and that quantitative analyses of soil samples be conducted.

SCOPE OF WORK

As we have discussed, STS is currently performing six tasks in response to the USEPA's request, including:

Task 1 - Work Plan Preparation. This agreement may serve as the work plan, or some expansion and elaboration of this agreement may be required prior to submittal to USEPA.

Task 2 - Surface Gamma Survey. A surface gamma radiation survey will be conducted over the previously unsurveyed parts of the Site. The areas surveyed by the USEPA will be surveyed in part to confirm consistent results are obtained.

Task 3 - Soil Borings. Soil borings will be drilled at those locations showing anomalous gamma readings (levels that are twice background measurements). Soil samples will be obtained for qualitative laboratory analysis.

Task 4 - Drilling of Step Out Borings. Step-out borings will be drilled and down-hole gamma readings will be taken in an effort to assess the horizontal extent of the radiologically impacted soil identified at each anomalous location.

Task 5 - Report Preparation. A summary report of the findings of the gamma radiation survey and soil investigation tasks will be prepared.

Task 6 - Project Management and Meetings. Project management involves daily interaction with field staff and subcontractors. STS anticipates that meetings with Alzheimer & Gray, ICPV and/or the USEPA will be needed.

A detailed description of these tasks is presented below.

Task 1 - Work Plan Preparation

A work plan will be prepared to describe the work to be conducted as part of the site investigation. This agreement may serve to provide the necessary information to USEPA. We recommend seeking USEPA concurrence with the proposed work in order to facilitate their acceptance of the findings. In the event a revision to this agreement is necessary, we have provided some costs in the proposed budget for discussions with USEPA representatives and preparing a revision for submittal.

Task 2 - Surface Gamma Survey

USEPA completed a survey of an estimated one-third of the Site. We propose to complete the gamma survey of the remaining portions of the Site. Additionally, there are apparently areas within the USEPA survey where data was not collected. STS will include those areas in the surface survey. Areas previously surveyed by USEPA will also be resurveyed to provide comparison and correlation between the two survey data sets.

The survey will be conducted in a combination of two modes. Where possible, the data will be collected using an automatic data logger and satellite global positioning system (GPS). However, due to the presence of tall buildings in the site vicinity, it is possible, even likely, that portions of the Site will not be able to be surveyed by this method. Those areas will be surveyed with data being recorded on data sheets and manually input to the GPS data set.

The survey use GPS positioning data will be measured with a Ludlum 2221 detector and a 2 x 2 NaI probe recording gamma readings on a two-second frequency. Readings will be normalized to counts per minute (CPM). The readings will be correlated to the vicinity cleanup level, which is 7.1 picocuries per gram (pCi/g) total radium. The Site will be surveyed in lines with spacing on the order of 5 meters, with the probe sweeping the surface at approximately ground level.

Where the GPS survey method is found to not be feasible, the area will be surveyed in a 5-meter grid. Gamma readings consisting of 30-second counts will be taken at the 5-meter grid intersections. The interior of the grids will also be surveyed and the highest readings recorded.

The probe will be unshielded to provide for greater sensitivity. Any location on the order of twice the background level or higher will be considered anomalous and revisited for boring and sampling in Task 3.

Task 3 - Drilling of Soil Borings and Soil Sampling

At those locations where the surface gamma survey indicates elevated readings, and to assess the three anomalies identified by the USEPA, STS will advance soil borings and will collect soil samples for analysis. For budgeting purposes, we have assumed that up to ten soil borings will be drilled. Due to restrictions imposed by the City of Chicago's Board of Underground, soil borings cannot be drilled to depths greater than 12 feet below ground surface (bgs) without a permit. A permit can be obtained, however such a request requires 60 days for approval. STS therefore proposes to drill soil borings at the Site to a maximum depth of 12 feet bgs. The borings will be continuously sampled, and the soil samples screened for elevated gamma radiation. Intervals exhibiting elevated radioactivity will be submitted for analysis. Analysis will be high-resolution gamma spectroscopy to identify the specific radionuclides. STS proposes that the gamma spectroscopy analyses be conducted by RSSI, Inc. of Morton Grove, Illinois.

Following the completion of the boring and sampling a PVC casing will be placed in the boring to keep it open. The boring will be gamma logged in 6-inch increments. The down-hole logging will be conducted using a Ludlum 2221 detector and a 2 x 2 NaI probe. The down-hole gamma logs will be compared to the screening data from the recovered samples.

The handling of soil cuttings and backfilling of the borings are described in Task 4.

Task 4 - Drilling of Step-out Borings

At locations where subsurface radioactive soils are encountered in Tasks 2 and 3, an assessment will be made of the apparent lateral extent of the impacted soil. This

assessment will be completed by drilling borings surrounding the impacted boring and down-hole logging of those borings. The step-out borings will be placed at a distance of approximately 3 meters (10 feet) from the initial borings drilled and sampled as part of Task 2. If an area is identified with elevated radioactivity at the ground surface over a larger area (greater than 3 meters radius) the step out borings will be drilled at the apparent edge of the impacted area. For budgeting purposes, we have assumed that up to 18 step-out borings will be drilled and logged.

If the step-out locations show impacts, an additional array of borings will be stepped out and logged. For the purpose of this agreement, a limited number of step-out borings are proposed. Additional borings may be required if impacts are more widespread than anticipated, or if the impacted locations are more numerous than anticipated. The step-out borings will be down-hole logged. However, no samples will be collected or analyzed from these borings.

Soil cuttings generated from the drilling activities will be temporarily stored on-site in Department of Transportation-approved 55-gallon drums. Each of the drums will be labeled and staged in a central location at the Site. Disposal of the waste material will be the responsibility of ICPV, however, if requested, STS can identify licensed contractors to assist with appropriate disposal of the waste material.

Following completion of the subsurface investigation, the PVC casing will be removed and the boreholes will be backfilled with bentonite clay that will be hydrated in place.

Task 5 - Preparation of a Summary Report

A summary report will be prepared for the data generated in this investigation. The report will include a map of the surface survey results, locations of the borings and step-out borings, gamma spectroscopy results for the samples submitted for analysis, and the results of the down-hole logging of the initial and step-out borings. That report will be provided for your review and comment before being finalized. Upon preparation of the final report, that report should be forwarded to USEPA in response to their request for an assessment prior to beginning any construction on the Site.

Task 6 - Project Management and Meetings

Project management includes a variety of tasks, such as coordination and supervision of field tasks, subcontractor procurement, budget tracking, laboratory interface, interacting with the client and legal counsel and related activities.

It is anticipated that a meeting will be held to discuss and present the data generated as part of this investigation. The meeting may include the USEPA and the property owners'

representatives. For the purpose of this agreement, we anticipate that STS will participate in one meeting.

ESTIMATED BUDGET AND SCHEDULE

STS will complete the tasks described herein on a time and materials basis, in accordance with our fee schedule (copy attached). Based upon our understanding of the work, the gamma radiation survey will be conducted within the schedule and budget listed below.

Task 1 - Work Plan Preparation. If it is necessary to prepare a revised work plan for the USEPA, we estimate that the revisions can be completed in approximately in one week. This would also include a revision to the generic health and safety plan that has been prepared for work on other properties in the vicinity. This task would entail an estimated cost of [REDACTED].

Task 2 - Surface Gamma Survey. The site survey involves a range of schedule and cost as a result of the two modes for conducting the survey. If the majority of the survey can be completed using the GPS, the work can be completed in approximately two weeks at an estimated cost of \$[REDACTED]. If much of the work requires manual surveying, the schedule will likely take 3 weeks and cost on the order of \$[REDACTED].

Task 3 - Drilling of Soil Borings. The initial drilling is anticipated to involve 8 to 10 locations. That boring program could be completed in perhaps 1 or 2 days, including the down-hole logging. Gamma spectroscopy analysis of soil samples would also be involved. This task would involve an approximately one week and a cost of \$[REDACTED].

Task 4 - Drilling of Step -out Borings. The schedule and cost for the step-out borings are difficult to estimate, as we don't know how many will be drilled. For the purpose of this agreement, we estimate two days of drilling and logging, with an estimated cost of \$[REDACTED].

Task 5 - Report Preparation. The summary report will be prepared for an estimated cost on the order of \$[REDACTED]. This, however, is dependent on the extent of the data generated. It is assumed the data will be presented in a series of maps and tables. The meeting to present the data is anticipated at perhaps a half-day. The summary report can be provided as a draft within ten days of receipt of the laboratory data.

Task 6 - Project Management and Meetings. Project management tasks are ongoing throughout the duration of the survey. STS has assumed that it will present the data in a meeting with a duration of approximately one half day. We estimate the costs for these tasks to be on the order of \$[REDACTED].

Overall Budget. Based upon the information described above, we estimate that the proposed survey can be completed for a cost ranging from approximately \$[REDACTED] to \$[REDACTED]

Schedule. The schedule calculates to an estimated 7 weeks from the start of fieldwork (July 23, 2001) to delivery of the draft report (anticipated to be the first week in September).

TERMS AND CONDITIONS

The attached Terms and Conditions of Service are an integral part of the agreement to provide the services as outlined in this agreement. We understand that the liability of Illinois Center Plaza Venture, an Illinois Limited Partnership, shall be limited to its net assets as an Illinois limited partnership. No partner of ICPV nor any such partner's separate property shall be subject to any liability hereunder. A deficient capital account of any such partner of ICPV shall not be nor deemed an asset or property of ICPV. To complete our file we ask that you sign one of the copies of this agreement and return it to us.

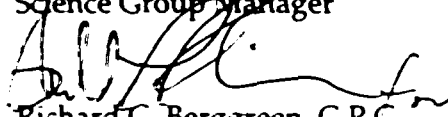
Should you have any questions with regard to the scope of services, fee estimate or work schedule as indicated herein, please contact either of the undersigned at (847) 279-2500. We thank you for the opportunity to fulfill serve your environmental consulting needs for this project.

Respectfully,

STS CONSULTANTS, LTD.



Stephen G. Torres, C.P.G.
Science Group Manager



Richard G. Berggreen, C.P.G.
Principal Geologist

Accepted by:

Signature: _____

Title: _____

Firm: _____

Date: _____

STS Project No. 1-32193-XH

© STS Consultants Ltd., July 2001

STS CONSULTANTS, LTD.

GENERAL CONDITIONS OF SERVICE



THESE GENERAL CONDITIONS OF SERVICE, INCLUDING ANY SUPPLEMENTAL CONDITIONS OF SERVICE WHICH ARE OR MAY BECOME APPLICABLE TO THE SERVICES DESCRIBED IN STS' PROPOSAL, ARE INCORPORATED BY REFERENCE INTO THE FOREGOING PROPOSAL AND SHALL ALSO BE INCORPORATED BY REFERENCE INTO ANY AGREEMENT UNDER WHICH SERVICES ARE TO BE PERFORMED BY STS FOR THE CLIENT. NO AGREEMENT OR UNDERSTANDING, ORAL OR WRITTEN, WHICH IN ANY WAY MODIFIES OR WAIVES THESE GENERAL CONDITIONS OF SERVICE SHALL BE BINDING ON STS (WHETHER CONTAINED IN THE CLIENT'S PURCHASE FORMS OR OTHERWISE) UNLESS HEREAFTER MADE IN WRITING AND EXECUTED BY STS' AUTHORIZED REPRESENTATIVE.

SECTION 1: SCOPE OF WORK

a. The scope of work and the time schedules defined in the Proposal are based on the information provided by the Client and shall be subject to the provisions of this agreement. If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by the Client, or if the Client directs STS to change the original scope of work established by the Proposal, a written amendment to the Agreement equitably adjusting the costs, performance time and/or terms and conditions thereunder, shall be

executed by the Client and STS as soon as practicable. STS, at its discretion, may suspend performance of its services until such an Amendment has been executed and, if such an Amendment is not agreed to within a reasonable time, STS may terminate this Agreement. In the event this Agreement is terminated pursuant to this Section, the Client shall pay STS for all services performed prior to termination and termination expenses as set forth in Section 15c of these General Conditions of Service.

SECTION 2: BILLINGS AND PAYMENTS

a. Payments for services and reimbursable expenses will be made on the basis set forth in the attached proposal. STS shall periodically submit invoices for services performed and expenses incurred and not previously billed. Payment is due upon receipt. For all amounts unpaid after 30 days from the invoice date, as set forth on STS' invoice form, the Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month, eighteen percent (18%) annually. The fees described in this agreement may be adjusted annually on the anniversary date of the effective date of this agreement.

b. The Client shall provide STS with a clear written statement within fifteen (15) days after receipt of the invoice of any objections to the invoice or any portion or element thereof. Failure to provide such a written statement shall constitute a waiver of any such objections and acceptance of the invoice as submitted.

c. The Client's obligation to pay for the services performed by STS under this Agreement shall not be reduced or in any way impaired by or because of the Client's inability to obtain financing, zoning, approval of governmental or regulatory agencies, or any other cause, reason, or contingency. No deduction shall be made from any invoice on account of penalty or liquidated damages nor will any other sums be withheld or set off from payments to STS. Client further agrees to pay STS any and all expenses incurred in recovering any delinquent amounts due, including, but not limited to reasonable attorney's fees, arbitration or other dispute resolution costs and all court costs.

d. If any subpoena or court order is served upon STS and/or any of its staff, subconsultants or subcontractors requiring presentation of documents or the appearance of STS' staff, subconsultants or subcontractors at a trial, deposition, or for other discov-

**SECTION 2:
BILLINGS AND
PAYMENTS,
CONTINUED**

ery purposes arising out of STS' services performed under this Agreement, Client will pay STS' fees (if any) applicable to STS' compliance with the subpoena or court order. Fees will be based on actual units used at the standard rates in effect at time of service

upon STS of the subpoena or court order. Billings shall include time and expenses incurred gathering, organizing and duplicating documents, preparing to give testimony, travel and testifying in deposition or trial.

**SECTION 3:
RIGHT OF
ACCESS**

a. If services to be provided under this Agreement require the agents, employees, or contractors of STS to enter onto the Project site, Client shall provide right-of-access to the site to STS, its employees, agents and contractors, to conduct the planned field observations or services.

ty on account of damages to subsurface structures or injury or loss arising from damage to subsurface structures, the locations of which are not indicated or are incorrectly indicated by the information provided by the Client.

b. If the scope of services includes, or is amended to include, the performance of exploratory borings or test pit excavations, Client will furnish to STS all diagrams, and other information in its possession or reasonably attainable by Client indicating the location and boundaries of the site and subsurface structures (pipes, tanks, cables, sewers, other utilities, etc.) in such detail as to permit identifying, in the field, boring / test pit locations which will avoid interferences with any subsurface structures. Client shall indemnify and hold STS harmless from liability

c. STS reserves the right to deviate a reasonable distance from prescribed or selected exploratory boring or test pit locations.

d. STS shall take reasonable precautions to minimize damage to the site due to its operations, but STS has not included in its fee, and is not responsible for, the cost of restoration for any damage resulting from its operations. At the Client's request and for additional fee, STS will, to the extent reasonably practicable, restore the site to conditions substantially similar to those existing prior to STS' operations.

**SECTION 4:
SAFETY**

a. It is understood and agreed that, with respect to Project site health and safety, STS is responsible solely for the safe performance by its field personnel of their activities in performance of the required services.

It is expressly agreed that the professional services hereunder do not involve any responsibility for the protection and safety of persons on and about the Project nor is STS to review the adequacy of job safety on the Project. It is further understood and agreed, and not in limitation of the foregoing, that STS shall not be in charge of and shall have no control or responsibility over any aspect of the erection, construction or use of any scaffolds, hoists, cranes, stays, ladders, supports or other similar mechanical contrivances or safety devices as defined and interpreted under any structural work act or other statute, regulation or ordinance relating in any way to Project safety.

required services in conformance with Federal, state, and local laws, ordinances and regulations due to Project site conditions or operations of other parties present on the Project site, STS may, at its discretion, suspend its services until such conditions or operations are brought into conformance with applicable laws, ordinances and regulations. If, within a reasonable time, operations or conditions are not in conformance with applicable laws, ordinances, and regulations, STS may, at its discretion, terminate this Agreement. In the event that the Agreement is terminated pursuant to this Section, the Client shall pay STS for services and termination expenses as set forth in Section 15 of this Agreement.

b. Unless otherwise specifically provided in this Agreement, Client shall provide, at its expense, facilities and labor necessary to afford STS field personnel access to sampling, testing, or observation locations in conformance with federal, state, and local laws, ordinances and regulations specifically, including, but not limited to regulations set forth in OSHA 29 CFR 1926

d. Current regulations promulgated by the Occupational Safety and Health Administration (OSHA) require that a "competent person" conduct inspections of excavations and review any supporting system if workers are to enter the excavations. See OSHA 29 CFR Part 1926 (Subpart P). Under the scope of work incorporated in this Agreement, STS does not provide and has not assumed any duties of inspection and monitoring of excavations required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P). STS has neither been assigned nor assumed the authority required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P).

c. If, in STS' opinion, its field personnel are unable to access required locations and perform the

St 7/30/01

**SECTION 5:
SAMPLES**

a. Unless otherwise specifically provided in this Agreement or amendments thereto, STS reserves the right to discard samples immediately after testing.

Upon request, the samples will be shipped, (shipping charges collected) or stored at the rate indicated in the fee schedule attached.

**SECTION 6:
REPORTS AND
OWNERSHIP OF
DOCUMENTS**

a. STS shall furnish up to six (6) copies of each report to Client. Additional copies shall be furnished at the rates specified in the fee schedule. With the exception of STS reports to Client, all documents, including original boring logs, field data, field notes, laboratory test data, calculations and

estimates are and remain the property of STS. Client agrees that all reports and other work product furnished to the Client not paid for in full will be returned upon demand and will not be used for any purpose, including, but not limited to design, construction, permits or licensing.

**SECTION 7:
STANDARD OF
CARE**

a. STS represents that it will perform its services under this Agreement in conformance with the care and skill ordinarily exercised by reputable members of the professional engineering community practicing under similar conditions at the same time in the same or similar locality.

for the Client's sole use to fulfill the purpose of this Agreement and STS is not responsible for interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys or explorations and the information and recommendations developed by STS are based solely on the information available.

b. NO OTHER WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE, OR INTENDED BY THE RENDITION OF CONSULTING SERVICES OR BY FURNISHING ORAL OR WRITTEN REPORTS OF THE FINDINGS MADE.

d. STS is not responsible for supervising, directing, controlling or otherwise being in charge of the construction activities at the Project site; or supervising, directing, controlling or otherwise being in charge of the actual work of the contractor, its subcontractors, or other materialmen or service providers not engaged by STS.

c. Any exploration, testing, surveys and analysis associated with the work will be performed by STS

**SECTION 8:
HAZARDOUS
SUBSTANCES**

ST
7/30/01

a. Upon entering into this Agreement, the Client shall notify STS of all such hazardous substances which it knows or which it reasonably suspects are or may be present at or contiguous to the Project site or which may otherwise affect the services to be provided. Thereafter, such notification to STS shall be required as soon as practicable after the Client discovers either the presence of hazardous substances which were not previously disclosed, increased concentrations of previously disclosed hazardous substances, or facts or information which cause the Client to reasonably suspect the presence of any such hazardous substances. Hazardous substances shall include but not be limited to, any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste or sample and whether it exists in a solid, liquid, semi-solid or gaseous form.

hazard or nuisance to those working in the area, Client shall immediately notify STS of such conditions, potential health hazard or nuisance which it knows or reasonably suspects exists and thereafter STS is authorized by the Client to take all reasonable measures STS deems necessary to protect its employees against such possible health hazards or nuisance. The reasonable direct cost of such measures shall be borne by the Client.

b. If all or any part of the scope of work is to be performed in the general vicinity of a facility or in an area where asbestos, dust, fumes, gas, noise, vibrations or other particulate or nonparticulate matter is in the atmosphere where it raises a potential health

c. Following any disclosure as set forth in the preceding paragraphs, or if any hazardous substances or conditions are discovered or reasonably suspected by STS after its services are undertaken, STS may, at its discretion, suspend its services until reasonable measures have been taken at the Client's expense to protect STS' employees from such hazardous substances or conditions. Whether or not STS suspends its services in whole or in part, the Client and STS agree that the scope of services, terms, and conditions, schedule and the estimated fee or budget shall be adjusted in accordance with the disclosed information or condition, or STS may, at its discretion, terminate the Agreement. In the event that this Agreement is terminated pursuant to this Section

ST
7/30/01

SECTION 12:
ALLOCATION
OF RISK

a. IT IS AGREED THAT THE CLIENT'S MAXIMUM RECOVERY AGAINST STS FOR THE PROFESSIONAL SERVICES PERFORMED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, IS ~~\$50,000~~ OR THE AMOUNT OF STS' FEE, WHICHEVER IS GREATER. IT IS EXPRESSLY AGREED THAT THE CLIENT'S SOLE AND EXCLUSIVE REMEDY AGAINST STS FOR PROFESSIONAL SERVICES PERFORMED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT OR OTHERWISE, IS THE AWARD OF DAMAGES NOT TO EXCEED THE STIPULATED ~~\$50,000~~ FIGURE, OR THE AMOUNT OF STS' FEE, WHICHEVER IS GREATER. IN NO EVENT SHALL STS BE LIABLE, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR CLIENT'S LOSS OF PROFITS, DELAY DAMAGES, OR FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING AT ANYTIME OR FROM ANY CAUSE WHATSOEVER.

b. Documents, including but not limited to, technical reports, original boring logs, field data, field notes, laboratory test data, calculations and estimates furnished to the Client or its agents pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Any reuse without STS' written consent will be at Client's sole risk and without liability or legal exposure to STS or to STS' contractor(s) and Client shall indemnify and hold harmless STS and STS' contractor(s) from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom.

c. Under no circumstances shall STS be liable for extra work or other consequences due to changed conditions or for costs related to failure of the construction contractor or materialmen or service providers to install work in accordance with the plans and specifications.

d. If any claim, suit, or legal proceeding, including but not limited to arbitration or mediation, (collectively "claim") arising out of the services under this Agreement is asserted against STS by a person or entity who is not a party to this Agreement, Client agrees, at its sole cost and expense, to defend STS from and against any such claim, suit or legal proceeding. The Client's obligation hereunder includes, but is not limited to, the payment of attorney's fees, court costs, and expert and consulting expenses required for the proper and vigorous defense of STS.

d.1. In no event shall continuation of Client's obligation to defend STS, as stated above, be conditional upon STS' contributing any sums of money toward settlement of any claim. In the event STS is held liable for a greater than pro rata share of any common liability for damage or injury to person(s) or property by operation of law, Client agrees to indemnify STS for those damages awarded in excess of its pro rata share.

d.2. In the event it is adjudicated that the event and/or damages giving rise to the claim were caused in whole or in part by the negligence of STS, Client's obligation to indemnify STS for costs of defense shall be reduced by an amount proportionately equal to the share of damages attributable to STS' negligence. STS shall reimburse Client for such proportionate defense costs incurred by client in defending STS as required by this paragraph 12.d.

e. Notwithstanding any other provision of this Agreement, it is further agreed that to the fullest extent permitted by law the Client shall indemnify and hold harmless STS and its employees, agents, contractors and consultants from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to attorneys' fees and all Court, arbitration or other dispute resolution costs, arising out of, resulting from, or related to the presence and/or involvement of hazardous substances or constituents, including hazardous waste, at or contiguous to the Project site or contained in samples collected by or received by STS from the Project site. The indemnification set forth in this paragraph 12.e. extends to claims against STS which arise out of, are related to, or are based upon, the dispersal, discharge, escape, release, spillage or saturation of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases or any other material, irritant, contaminant or pollution in or into the atmosphere, or on, onto, upon, in or into the surface or subsurface (a) soil, (b) water or watercourses, (c) objects, or (d) any tangible or intangible matter, whether such event or circumstances is sudden or not. Nothing in this Paragraph 12.e. is intended to indemnify, or shall be construed as indemnifying, STS with respect to claims, losses, expenses or damages to the extent caused by STS' own negligent acts or omissions.

\$1,000,000

St
7/30/01

\$1,000,000

FOR DAMAGES UP TO
7/30/01

**SECTION 13:
LIABILITY
INSURANCE**

a. STS represents that it and its agents, and consultants employed by it, is and are protected by Worker's Compensation insurance and that STS has coverage under liability insurance policies which STS deems reasonable and adequate. Upon request, STS shall furnish certificates of insurance to the Client evidencing the risks insured against, and the limits of liability thereunder. In the event the Client requires specific inclusions of coverage in addition to that obtained by STS, or increased limits of liability

in STS' liability policies, the cost of such inclusions or increased limits shall be borne by the Client. Except as otherwise provided in Section 12 the Client agrees to limit the liability of STS to the limits of STS' insurance. STS shall not be responsible for claims, damages, losses and expenses arising out of or resulting from acts and/or omissions of the Client, its employees, agents, staff, consultants, contractors or subcontractors employed by it or by any other entity.

**SECTION 14:
DISPUTE
RESOLUTION**

a. All claims, disputes, controversies or matters in question arising out of, or relating to this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, (collectively "disputes") shall be submitted to mediation before and as a condition precedent to any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and STS shall select by mutual agreement a neutral mediator. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and STS within ten (10) calendar days, a mediator shall be chosen as specified in the Construction Industry Mediation Rules of the American Arbitration Association then in effect.

b. If a dispute cannot be settled through mediation as set forth above, then such dispute shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.

Demand for arbitration shall be made by either party within ten (10) calendar days following termination of mediation. The date of termination of mediation shall be the date of written notice of closing of mediation proceedings issued by the mediator to each of the parties. Demand for arbitration shall be made by filing notice of demand, in writing, with the other party and the American Arbitration Association. The award rendered, if any, by the arbitrator(s) shall be final and binding on both parties and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

c. Notwithstanding any other provisions of this Section 14, in no event shall a demand for mediation be made more than two (2) years from the date the party making demand knew or should have known of the dispute or six (6) years from the date of substantial completion of STS' participation in the Project, whichever date shall occur earlier.

d. All mediation or arbitration shall take place in Chicago, Illinois unless Client and STS agree otherwise. The fees of the mediator or arbitrator(s) and the costs of transcription and other costs incurred by the mediator or arbitrator(s) shall be apportioned equally between the parties.

**SECTION 15:
TERMINATION**

a. This Agreement may be terminated by either party upon at least seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. The only exceptions to this seven-day written notice condition are STS' rights to terminate this Agreement as set forth in Sections 1, 4 and 8 of the Agreement.

b. In addition, STS may terminate this Agreement if the Client suspends STS' services for more than sixty (60) consecutive days through no fault of STS.

c. If this Agreement is terminated, STS shall be paid for services performed prior to the termination date set forth in the notice plus termination expenses. Termination expenses shall include personnel and equipment rescheduling and re-assignment adjustments and all other related costs incurred directly attributable to termination.

**SECTION 16:
EMPLOYMENT**

a. Client agrees that, prior to the completion of STS' services on the Project, Client and its officers, agents or employees shall neither (1) offer employment to STS' employees, (2) advise STS' employees

of employment opportunities with Client, Client's parent or affiliate organization(s), if any, nor (3) inquire into employment satisfaction of STS' employees.

**SECTION 17:
INDEPENDENT
CONTRACTOR**

a. The relationship between the Client and STS created under this Agreement is that of principal and independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity

not a party hereto and no such person or entity is intended to be or shall be construed as being, a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by STS' authorized representative.

**SECTION 18:
SEVERABILITY**

a. In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions

hereof shall remain in full force and effect, and binding upon the parties hereto.

**SECTION 19:
SECTION
HEADINGS**

a. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein.

**SECTION 20:
SURVIVAL**

a. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the

Client and STS shall survive the completion of services and the termination of this Agreement.

**SECTION 21:
ASSIGNS**

a. Neither the Client nor STS may delegate, assign, sublet or transfer its duties, responsibilities or inter-

ests in this Agreement without the written consent of the other party.

**SECTION 22:
CHOICE OF LAW**

a. This Agreement shall be governed by the law of the State of Illinois.

**SECTION 23:
WRITTEN
NOTICE**

a. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if

delivered at or sent by registered or certified mail to the last business address known to the party giving notice.